the broker. *Lunney v. Healey,* 56 Nebr., 313; *Pinkerton v. Hudson,* 87 Ark., 506; *Friedstedt v. Dietrich,* 84 Ill. App., 610. This is true, in the absence of an express contract of warranty, even if the purchaser is financially unable or for any other reasons fails to fully perform the contract. *Moore v. Irwin,* 89 Ark., 289; *Greene v. Hollingshead,* 40 Ill. App., 195. Or if the contract is mutually abandoned. *Sullivan v. Frazier,* 57 N. Y. Supp., 1008. There are, however, well-considered cases in Maryland and Rhode Island which require the contract of sale to be merged into an actual sale in order to entitle the broker to his commission, unless it clearly appears that the owner did not rely on the broker's judgment as to the financial responsibility of the purchaser. *Riggs v. Turnbull,* 105 Md., 135; *Butler v. Baker,* 17 R. I., 582. But no question can arise as to the doctrine that a broker, upon express agreement with the principal, is entitled to his commission when a contract is made on the principal's own terms, even if the contract is never fully carried out. *Hipple v. Laird,* 189 Pa. St., 472; *Alt v. Doscher,* 92 N. Y. Supp., 439, affirmed on opinion of lower court in 186 N. Y., 566; *Hallack v. Hinckley,* 19 Colo., 38. But in no case will a broker be entitled to his commission if there has been fraud, bad faith, or fault on his part. *Moore v. Irwin, supra; Alt v. Doscher, supra; Burnham v. Upton,* 174 Mass., 408.

CONTRACTS—FRAUD—NEGLIGENCE AS DEFENSE.—COLORADO INV. LOAN CO. V. BEUCHAT, 111 PAC., 61 (COLO.).—*Held,* that where one of two contracting parties is fraudulently induced to execute a written instrument on the false representation that it expresses the agreement which the parties had previously made orally, the party defrauded may defend against the enforcement of the fraudulent instrument, though he is chargeable with negligence in relying on the false representations, and in not reading the instrument.

As a general rule, where a contract is procured by false representation of a material fact, the fraud is a defense against the enforcement of the instrument. *Davis v. Read,* 37 Fed., 418; *McShane v. Hazelhurst,* 50 Md., 107. And non-disclosure of a material fact may be sufficient to constitute such fraud. *Stewart v. Wyoming Cattle Ranch Co.,* 128 U. S., 383. However, there is a conflict of opinion as to whether this defense may be made, when the party defrauded is chargeable with negligence in relying upon the false representations. The majority opinion seems to allow a defense under such circumstances as in the principal case. *Livingston v. Strong,* 107 Ill., 295. Contra, *May v. Johnson,* 3 Ind., 449. Thus, it has been held that a failure to examine a deed, *Albany Savings Institution v. Burdick,* 87 N. Y., 40; or a failure to make inquiries as to the truth of facts stated; is not such negligence as will bar recovery. *Mead v. Bunn,* 32 N. Y., 275. In the same manner mere praise or an expression of opinion as to value is not sufficient to warrant the setting aside of a contract. *Zemple v. Hughes,* 235 Ill., 424; *Flynn v. Finch,* 137 Iowa, 378. And invariably, in order to avoid the legal effect of a written instrument knowingly executed and intended to embody the agreement, the proof of fraud must be strong and clear. *McCall v. Bushnell,* 41 Minn., 37; *Parlin v. Small,* 68 Me., 289.